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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF)
)
)
PROPOSED RULEMAKING ON THE STORAGE)
AND DISPOSAL OF NUCLEAR WASTE)
)
(Waste Confidence Rulemaking))

PR-50, 51 (44 F.R. 61372)

STATEMENT OF POSITION
OF THE
STATE OF MINNESOTA

I. INTRODUCTION

The State of Minnesota by its Minnesota Pollution Control Agency ("MPCA"), and its Attorney General hereby files its Statement of Position in the above-captioned proceeding. This Statement of Position is filed pursuant to the Order issued by the Presiding Officer on May 29, 1980, in which July 7, 1980, was established as the date upon which all participants were required to file their Statements of Position.

II. IDENTITY AND INTEREST

The MPCA is an agency of the State of Minnesota. It is comprised of a nine-member citizen board appointed by the Governor. Its staff of 320 persons is headed by an Executive Director. It is charged with regulatory responsibilities in the environmental areas of air quality, water quality, solid and hazardous waste, and noise pollution. As such, the two nuclear power plants located in Minnesota, Northern States Power Company's Monticello and Prairie Island nuclear generating plants, are subject to MPCA regulation for all non-radioactive discharges and for all radioactive air emissions.

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Warren Spannaus is the Attorney General of the State of Minnesota and is generally charged with enforcement of all laws of this State and is the attorney for all State agencies. Minn. Stat. § 8.01 et seq. (1978). The Attorney General is specifically charged with enforcement of the statutes and rules relating to air, land, and water pollution. Minn. Stat. § 115.071 (1978)

The State of Minnesota's intervention and assertion before the Nuclear Regulatory Commission ("NRC") of contentions concerning radioactive waste disposal in the Prairie Island license amendment proceeding, along with New England Coalition on Nuclear Pollution's intervention in the Vermont Yankee license amendment proceeding, concerning modification of the spent fuel pools at those facilities, were directly responsible for the decision of the United States Court of Appeals for the District of Columbia which is the impetus for this proceeding, State of Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979). The State of Minnesota continues to be concerned about its waste disposal contentions it raised in that proceeding, which have not yet been addressed but which the NRC will attempt to address in this proceeding. Thus the State of Minnesota has an interest in presenting its views on the issues to be addressed in this proceeding.

The State of Minnesota hired Dr. Dean Abrahamson to serve as its consultant with respect to these proceedings. Dr. Abrahamson's

evaluation and conclusions with respect to the issues to be addressed in this proceeding, together with a copy of his curriculum vitae, are attached hereto. (Attachments A and B.) The Statement of Position of the State of Minnesota is based, in large part, on Dr. Abrahamson's evaluation and conclusions.

III. SUMMARY OF POSITION

The Notice of Proposed Rulemaking set forth three issues to be addressed in this proceeding:

- 1) Whether the NRC can reasonably conclude that it is confident that radioactive wastes produced by nuclear facilities will be disposed of safely,
- 2) When any such disposal will be available, and
- 3) Whether such wastes can be safely stored until they are disposed of safely. 44 Fed. Reg. at 61372-61373.

The State of Minnesota has come to the following conclusions as to these issues:

- A. NRC cannot reasonably conclude that it is confident that radioactive wastes produced by nuclear facilities will be disposed of safely.
- B. Since NRC cannot be confident that radioactive wastes will be disposed of safely, NRC cannot determine when such disposal will be available.

- C. Since NRC cannot determine when such disposal will be available, NRC cannot determine whether such wastes can be safely stored until they are disposed of safely.

III. BASIS FOR CONCLUSIONS

- A. NRC Cannot Reasonably Conclude That It Is Confident That That Radioactive Wastes Produced by Nuclear Facilities Will Be Disposed of Safely.

The first issue to be addressed in this proceeding is the degree of confidence that radioactive wastes produced by nuclear facilities will be disposed of safely. In order to make this determination, the NRC must evaluate the technical, as well as the social and institutional, problems associated with nuclear waste disposal. Based on the information available at this time with respect to these factors, the NRC cannot reasonably conclude that it is confident that radioactive wastes will be disposed of safely.

As discussed by Dr. Abrahamson in his submittal, the technical feasibility of nuclear waste disposal can best be assessed by first establishing criteria governing the selection, design, construction, operation and maintenance of a nuclear waste disposal facility and then by determining whether such criteria can be met. 1/ Such criteria have not yet been adopted by the appropriate

1/ As noted in Dr. Abrahamson's evaluation, at a minimum the following criteria should be established: environmental radiation protection standards, site selection criteria, and, disposal facility performance criteria. Abrahamson Submittal at 4.

regulatory agencies. Until such criteria are adopted, the NRC cannot, in any disciplined fashion, determine whether or not nuclear waste disposal is technically feasible.

In addition to NRC's present inability to conclude that safe waste disposal is technically feasible, presently unresolved social and institutional problems also preclude a finding that safe disposal will be accomplished. Such problems include, but are not limited to, public opposition, state and local siting requirements, and lack of an institutional commitment to permanent waste disposal. These, and other similar problems, must be identified, analyzed, and resolved before the NRC will be able to conclude that radioactive wastes will be disposed of safely.

In its Statement of Position, the Department of Energy ("DOE") states that:

Because social concerns are less easily predicted, less confidence can be placed in assessment of their impacts on the repository program. Nonetheless, there is growing public recognition that nuclear waste management is a national problem and that solution of the problem should not be postponed for future generations.

Statement of Position of the United States Department of Energy (April 15, 1980) at III-87. ("DOE Statement") The implication of this statement appears to be that public opposition will not unduly hinder development of a nuclear waste disposal facility because the public recognizes the need to find a solution to the problem. While the public may recognize the urgency of the waste disposal problem, it would be unrealistic and naive to believe

that there will not be intense public opposition to any proposed waste disposal site. It is obvious that there has been, and continues to be, a great deal of public fear and mistrust of all existing phases of the nuclear fuel cycle which has manifest itself in opposition to various proposals from proposed uranium mining to proposed construction of nuclear power plants. It seems logical to assume, therefore, that this fear, mistrust and resulting opposition will carry over to proposed waste disposal facilities.

The DOE's projected schedule for an operational waste disposal facility appears to include only the possibility of NRC licensing. DOE has failed to consider the problems which could arise because of additional or conflicting state and local requirements. For example, legislative approval is required before a radioactive waste disposal facility could be constructed or licensed in Minnesota. See Minn. State. §116C.71-74 (1978). Other state legislatures have enacted similar legislation which would make it difficult, if not impossible, to site waste disposal facilities in those states. 2/ State and local licensing or approval may also be required. The NRC must take these factors into account in making its determination. This proceeding is to consider, as a representative case for handling high level nuclear

2/ See, 10 Vermont Statutes Annotated §6501; Oregon Revised Statutes §469.525; Revised Code of Montana, Title 75, ch. 10, Part 2

The representative nuclear waste to be considered in this proceeding is non-reprocessed spent fuel. First Prehearing Order (February 1, 1980). Even though spent fuel is now clearly considered a waste product and even though the Administration has indefinitely deferred commercial reprocessing of spent fuel, it appears that there may, nonetheless, be an institutional bias in favor of reprocessing, rather than permanent disposal, of spent fuel.

As Dr. Abrahamson points out at page 28 in his submittal: "The long term viability of the nuclear option demands the deployment of breeder reactors and the reprocessing of spent reactor fuel." This is consistent with the position of Northern States Power Company (the only utility in Minnesota operating a nuclear power plant) that spent fuel is a valuable resource, rather than a nuclear waste. 3/ Unless federal regulatory agencies and the nuclear utilities in this country accept the fact that spent fuel is a nuclear waste and proceed accordingly, the lack of commitment to resolve the problem will preclude its resolution. Unless the NRC can conclude that there is a real institutional commitment to solve the nuclear waste disposal problem, the NRC cannot conclude that radioactive wastes will be disposed of safely.

3/ In the Matter of the Application of Northern States Power Company for a Certificate of Need to Increase the Storage Capacity of the Spent Fuel Pool at the Prairie Island Nuclear Electric Generating Facility, Minnesota Energy Agency, EA-80-001-AK, Testimony of Dale Vincent, June 18, 1980.

As Dr. Abrahamson states. "[t]here can be no confidence that a [nuclear waste disposal] program will be successful . . . unless there is convincing evidence that [social and institutional] issues are recognized and being subjected to at least as complete analysis as are the technical issues." Abrahamson Submittal at 25-26. DOE has failed to do so. The past failure of federal nuclear waste management programs is due, in large part, to the failure to address such issues. Abrahamson Submittal at 23-29. And, until the NRC has fully identified, analyzed and resolved these issues, it cannot reasonably conclude that safe disposal of nuclear wastes will be accomplished.

B. Since The NRC Cannot Be Confident That Radioactive Waste Will Be Disposed of Safely, NRC Cannot Determine When Such Disposal Will Be Available.

As discussed above, because of unresolved technical, social and institutional problems, the NRC cannot presently conclude that radioactive wastes will be disposed of safely. Until such a conclusion can be made, it follows, a fortiori, that the NRC cannot determine when such disposal will be available.

C. Since NRC Cannot Determine When Such Disposal Will Be Available, NRC Cannot Determine Whether Such Wastes Can Be Safely Stored until They Are Disposed of Safely.

Before any determination can be made as to whether spent fuel can be safely stored until it is safely disposed of, the NRC must

first determine the period of time over which spent fuel must be stored. As previously discussed, it is not presently possible for NRC to conclude when, if ever, such waste disposal facilities will be available. Therefore, since it is impossible to determine the period required to store spent fuel, no conclusions can be drawn as to whether or not it can be safely stored indefinitely.

Even using the assumptions made in the DOE Statement as to the dates when a permanent disposal site will be available, the NRC cannot conclude that spent fuel can be safely stored until permanently disposed of. The DOE assumed availability of a waste storage site by 1997-2006. DOE also recommended that there be plans for the storage of spent fuel for forty years. As stated by Dr. Abrahamson, there is "not a shred of scientific evidence that spent fuel can be safely stored for these periods." Abrahamson Submittal at 33. Therefore the NRC should find that no conclusions can be drawn as to whether or not spent fuel can be safely stored until permanent spent fuel disposal sites are available.

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Respectfully submitted,

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